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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/842,028	04/26/2001	Phillip John Black	3638-10	6910

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EXAMINER

KIM, CHONG HWA

ART UNIT

PAPER NUMBER

3682

DATE MAILED: 12/03/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/842,028

Applicant(s)

BLACK, PHILLIP JOHN

Examiner

Chong H. Kim

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 October 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 7-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 7-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

The Examiner acknowledges the Applicant's Amendment filed Oct 9, 2002 in response to the Office action made on Jul 9, 2002 and canceling of claims 5 and 6.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1-4, 7-9, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Fournier, U.S. Patent 5,577,417.

Fournier shows, in Fig. 3, a split grip control lever comprising;

a fixed base portion 12;

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a movable upper portion 14 that is separately pivotable relative to the fixed base portion 12, wherein the movable upper portion 14 and the fixed base portion 12 define a substantially continuous profile, and wherein the movable upper portion and the fixed base portion define means for an operator to resist effects of external forces via one hand while maintaining control of the movable upper portion with the one hand;

comprising a control device 24, 32-38 positioned within the fixed base portion 12, wherein the movable upper portion 14 comprises a control shaft 40 coupled with the control device 38;

wherein the control device is disposed at a substantially central position relative to the substantially continuous profile such that a pivot point of the control shaft 40 is centrally disposed relative to the substantially continuous profile;

wherein the fixed base portion 12 is fixedly securable to a surface, and wherein the control device is disposed at a position spaced from the surface at a substantially central position relative to the substantially continuous profile;

wherein the substantially continuous profile is shaped to fit an operator's hand;

wherein the substantially continuous profile is shaped to fit one of an operator's right hand or left hand;

wherein the movable upper portion 14 is disposed relative to the fixed base portion 12 and sized for manipulation by an operator's thumb and index finger, and wherein the fixed base portion is disposed relative to the movable upper portion and sized to support the operator's hand (see column 3, lines 60-67); and

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wherein the movable upper portion and the fixed base portion define an ergonomic profile.

3. Claims 10-13 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Fournier, U.S. Patent 5,577,417.

Fournier shows, in Fig. 3, a split grip control lever comprising;
a fixed based portion 12 securable to a surface of the machinery;
a control portion 14 disposed adjacent the fixed base portion 12 and movable relative to the fixed base portion, the control portion being separated from the fixed base portion via a split line and being contiguous with the fixed portion to define a substantially continuous profile, wherein the fixed base portion and the control portion define means for an operator to resist effects of external forces via one hand while maintaining control of the control portion with the one hand;

a control device 24, 32-38 positioned within the fixed base portion, wherein the control portion comprises a control shaft 40 coupled with the control device 38;

wherein the control device is disposed at a substantially central position relative to the lever profile such that a pivot point of the control shaft is centrally disposed relative to the lever profile;

wherein the fixed base portion is fixedly securable to a surface, and wherein the control device is disposed at a position spaced from the surface at a substantially central position relative to the lever profile; and

wherein the control portion and the fixed base portion define an ergonomic profile.

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4. Claim 14 is rejected under 35 U.S.C. 102(e) as being anticipated by Evert et al., U.S. Patent 6,152,676.

Evert et al. shows, in Figs. 1 and 2, a machine comprising;
a machine frame 1 supporting at least one movable element;
a control lever 8 secured to the machine frame 1, the control lever 8 comprising;
a fixed base portion 11 fixedly secured to the machine frame 1, the fixed base portion providing support for an operator to resist effects of effects of external movements resulting from movement of the machine; and

a movable upper portion 13 that is separately pivotable relative to the fixed base portion for controlling movement of the at least one movable element, wherein the movable upper portion and the fixed base portion define a substantially continuous profile.

5. Claims 14-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Ditzig, U.S. Patent 5,350,891.

Ditzig shows, in Figs. 1 and 2, a machine (car) comprising;
a machine frame (vehicle frame) supporting at least one movable element (side mirror);
a control lever 10 secured to the machine frame, the control lever 10 comprising;
a fixed base portion 14, 16, 116 fixedly secured to the machine frame, the fixed base portion providing support for an operator to resist effects of effects of external movements resulting from movement of the machine; and

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a movable upper portion 122 that is separately pivotable relative to the fixed base portion for controlling movement of the at least one movable element, wherein the movable upper portion and the fixed base portion define a substantially continuous profile;

wherein the control lever 10 further comprises a control device 52 positioned within the fixed base portion 16, and wherein the movable upper portion comprises a control shaft 120 coupled with the control device;

wherein the control device is disposed at a substantially central position relative to the lever profile such that a pivot point of the control shaft is centrally disposed relative to the lever profile; and

wherein the control device is disposed at a position spaced from the machine frame at a substantially central position relative to the lever profile.

Response to Arguments

6. In response to the applicant's argument that Fournier fails to show the base portion being neither fixed nor fixable, it is the Examiner view that such base portion as shown by Fournier is fixed and/or fixable. The word "fixed", provided by Merriam Webster's Collegiate Dictionary, 10th Edition, is defined as being "securely placed or fastened". Certainly, the base portion 12, shown in Figs. 2 and 3, of Fournier is "fixed" or "securely placed or fastened" to either the cable 22 itself or to the machine 20 via the cable 22. Furthermore, the amended recitation regarding the external forces in claims 1, 10, and 14, does not overcome the rejections by Fournier, Evert et al., or Ditzig. It is inherent in nature that the external forces can be created in myriad ways and such grip control devices of Fournier, Evert et al., or Ditzig are designed so that at least some of

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the external forces can be resisted. If all of the grip control levers as shown by Fournier, Evert et al., or Ditzig can not even resist at least one of the effects of external forces, then the grip control levers would fail to perform their functionalities, mainly the controlling of their machines.

7. In response to the applicant's argument that Fournier fails to show the fixed base portion fixedly securable to a surface of the machinery as recited in claim 10, it is the Examiner's position that the fixed base portion 12 of Fournier is capable of being fixedly securable to a surface of the machinery. The phrase "fixedly securable to a surface of the machinery" is a functional recitation wherein no patentable weight has been given. Nevertheless, if one of ordinary skill in the art desires to secure the base portion to a surface of the machinery, it would be obvious to perform such task since the base portion as shown by Fournier has the capability to be fixedly secured to a surface.

8. In response to the applicant's argument that Evert fails to show the fixed base portion fixedly secured to the machine frame as recited in claim 14, it is noted above that the word "fixed" is defined as being "securely placed or fastened". Whether the base portion is pivoted or not, the base portion 11 as shown by Evert et al. is securely placed or fastened to the machine frame 1. Furthermore, the base portion 11 provides for an operator to resist effects of external movements resulting from movements of the machine. The evidence for such limitation can be found in that the base portion can only pivoted transversely or laterally depending on the direction the axis 12 is disposed. If the base portion is pivoted transversely, then the base portion provides for an operator to resist the laterally effecting external movements resulting from the movements of the machine.

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9. In response to the applicant's argument that Ditzig fails to show at least structure that provides support for an operator to resist effects of external movements resulting from movement of a machine, and the upper and base portions defining a substantially continuous profile, it is the Examiner's position that Ditzig shows every element recited in claims 14-17. First, regarding the applicant's supposition that "perhaps the top surface of the housing shell 116 would be exposed to the operator", Ditzig is silent as to which elements are exposed to the operator's hand. It appears that a majority of the shell part 116 is exposed to the operator's hand. Second, the housing shell 116 which is a part of the fixed base portion is, in the Examiner's view, a structure large enough to provide support for an operator to resist effects of external movements resulting from movement of a machine. And last, the movable upper portion and the fixed base portion define a substantially continuous profile. The profile, "contour" or "outline" as defined by the Dictionary, of the upper portion and the fixed base portion are neither broken nor discontinued. Hence, the profile of both portions is construed as being substantially continuous.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chong H. Kim whose telephone number is (703) 305-0922. The examiner can normally be reached on Monday - Friday; 9:00 - 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A Bucci can be reached on (703) 308-3668. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and (703) 305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

CHK
December 2, 2002



CHONG H. KIM
PRIMARY EXAMINER